

## **INTERIM ADVICE NOTE 126/15**

### **Environmental Assessment Screening and Determination**

#### **Summary**

Guidance for screening projects for Environmental Impact Assessment is provided in DMRB Volume 11, SECTION 2, Part 3 (HD47/08). This IAN supplements HD47/08 by providing additional updated guidance for the screening and determination process. It replaces IAN 126/09.

#### **Instructions for Use**

This IAN is supplementary guidance and should be read in conjunction with DMRB HD47/08.

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## **1. Introduction**

The Highways Act 1980 Section 105 (as amended) requires that the Strategic Highways Company (referred to as Highways England from this point) determine whether or not a project needs to be made the subject of an Environmental Impact Assessment (EIA) before it considers whether to consent the project.

In 2008 DMRB Volume 11, Section 2 Part 3 (HD47/08) made the application of a screening process mandatory for all trunk road projects i.e. those that are consented under the Highways Act. It also provided advice and set requirements on how to report the determination.

Subsequently it has been recognised further guidance is required around the definition of a relevant project. In addition legislative changes have been made to the way competent authorities are expected to report the determinations. It is evident that there may be benefits in determining projects earlier in the programme than has been historically done. Therefore this IAN provides updated advice and requirements on these aspects.

### **1.1 Purpose and required Actions**

The purpose of this IAN is to help Highways England and its supply chain provide evidence that they have discharged their respective legal responsibilities, in relation to environmental assessment screening and determination of highways projects in a consistent way.

Those involved in the environment screening and determination of highway projects should ensure they are familiar with the requirements and advice contained within this IAN.

### **1.2 Relationship**

DMRB Volume 11 Section 2 Part 3 (HD 47/08) sets out the procedural requirements for screening of all Highways England projects and those belonging to the Devolved Administrations. This IAN replaces IAN 126/09 and provides updated requirements in terms of determination and updated advice in terms of the screening and determination stages for Highways England only. It should be read in conjunction HD47/08.

### **1.3 Implementation**

This document shall be implemented in accordance with instructions from Highways England. This should be based on a need to implement the requirements forthwith on all projects for the assessment of motorway and all-purpose trunk roads except where the procurement of works has reached a stage at which, in the opinion of the Highways England, its use would result in significant additional expense or delay progress (in which case the decision must be recorded).

### **1.4 Scope**

The guidance contained within this IAN is applicable to projects carried out by Highways England under the Highways Act 1980 (as amended). These are Annex I or Annex II relevant projects as defined in Volume 11, Section 2, Part 3 (HD47/08) and Sections 2.3 – 2.5 of this IAN.

It is not applicable to other projects which may be built on the strategic road network but consented under different regimes such as the Town & Country Planning Act.

## Screening & Determination

### 2.1 Process

The process for screening a project is set out in Volume 11, Section 2, Part 3 (HD47/08) – Screening a Project for Environmental Impact Assessment. The screening process is comprised of Step 1 and 2 in HD 47/08 and is largely a mechanical process. First deciding whether a project is an Annex I or II scheme and then under Step 2 deciding whether it is a Relevant Project.

In undertaking Step 2 (deciding project relevance) it is recognised that there are judgements to be made. To ensure consistency in qualification of relevant projects the following guidance is provided.

### 2.2 Definition of Relevant Project

A relevant project is defined in the Highways Act S105A (as amended) as:

*“a project for constructing or improving a highway where the area of the completed works together with any area occupied during the period of construction or improvement by requisite apparatus, equipment, machinery, materials, plant, spoil heaps or other such facilities exceeds 1 hectare or where any such area is situated in whole or in part of a sensitive area.”*

HD 47/08 goes further in saying

*1.13 However, the thresholds are not absolute. There may be instances where the Annex II project falls outside the thresholds, but still has the potential to cause significant effects in consideration of the selection criteria in Annex III (refer to Step 3 below). This may occur, for example, where the project is located adjacent to a sensitive area and has potential to cause indirect significant environmental effects. It is therefore necessary to consider the likely significance of any effects arising from an Annex II project that falls outside of the thresholds on a case-by-case basis using professional judgement.*

### 2.3. Maintenance projects

HD 47/08 Table 1.1 further defines that “*strictly maintenance projects*” are excluded from the consideration of Relevant Projects. The reasoning behind this is that it was judged that non construction type interventions (for example routine maintenance activities) were never likely to generate the possibility of significant effects and so it was seen as unreasonable to investigate them further. There is more uncertainty regarding renewal type projects which historically have been funded from maintenance funding and therefore identified as maintenance projects; although they often have construction or improvement type activities associated with them.

However by adopting the same logic it can be concluded that that these types of projects would be unlikely to give rise to anything other than negligible effects (most effects would be associated with the construction phase but mitigated via good practice). Therefore it is advised that renewal type projects are discounted from the relevant project calculations unless there is a strong likelihood that there are effects which are potentially significant. In this case it would be reasonable to examine this further via the determination stage. It follows that the earlier in the project this is understood the better.

## 2.4 Traffic Management

The inclusion of traffic management zones within the calculation of the 1ha area threshold has been applied inconsistently. The advice is that the actual proportion of these zones occupied by “*requisite apparatus, equipment, machinery*”, should be taken into account when calculating the area.

## 2.5 Sensitive Areas

It has been noted that there have been inconsistencies in the way judgements have been made in deciding whether an intervention in the network was indeed a “project” or whether it is located partly in a sensitive area.

Clearly the intent within the Highways Act was that, for sensitive areas it was thought appropriate to set the threshold at a lower level to ensure projects considered the potential issues early enough. However, there is also a need to ensure legal compliance is undertaken in an efficient way; to ensure that effort is only focused on those aspects that clearly affect the main features of the designation or the designation itself.

Therefore it is a requirement that clear improvements or new construction projects are screened as outlined in HD 47/08. However for minor new construction or improvement works, projects should look for more efficient ways of determining projects .e.g across areas or programmes. Highways England’s Environmental Advisors must be consulted for advice.

## 2.6. Determination

The requirements for Determination are provided in Steps 3 and 4 of HD 47/08 and should be referred to in the first instance when undertaking a Determination. HD 47/08 does not give any timescales for when a Determination should be carried out other than saying the following;

*1.19 In order to make a satisfactory determination, some assessment work is required to inform the screening process. It is essential that determinations are soundly based whilst at the same time minimising the effort spent on assessment where it is not warranted.*

## 2.7 Timing of Determination

Traditionally practice has been to make the “Determination” following the reporting of, either an Environmental Statement (ES) or an Environmental Assessment Report (EAR). The advantage of this is that the Determination has been made based on the best available analysis of the effects and so gives the greatest degree of confidence available using predictive methods. The disadvantage of this is that it defers the question of focusing on significant effects to the end of the process, essentially the conclusion stage and perpetuates the “safe” option. This is one of the main reasons that assessments have become disproportionate, as it does not require compliers to consider at the beginning what level of information they require to form a view about significant effects.

The other implication of this is that it leaves the question of whether a project progresses down the Highways Act or Planning Act route until late on in the project timeframe. In considering when to undertake the Determination, projects should aim to complete this as soon as they feel they have the necessary information with which to base a reasonable decision. This will allow an earlier view on the need to prepare an NSIP application and or removal of the Determination from the critical path. Consultation with Highways England Environmental Advisors will aid projects in understanding when this is possible.

Projects are reminded that determining whether a project is likely to give rise to significant effects concerns likelihood not certainty, and a level of uncertainty will always be included. To be defensible the determination would still need to be based on a reasonable level of information. It is clear that for certain types of projects, for which the main components are

known at an early stage, the main impacts and effects can be reasonably predicted. Once the main components of the scheme are fixed it should be possible to produce a view on significant effects and therefore a determination with a reasonable level of confidence. Some project types effectively have their outline design fixed (Design Fixes) fairly early on by published design standards, and so determinations could, if required, be based on this level of detail; perhaps with local contexting. An example may be new barrier schemes. Projects are reminded that any determination must be supported by an appropriate level of environmental assessment. This in theory could be a screening level assessment (see IAN 125/15) or a Simple or Detailed Assessment.

Projects are reminded that any determination is made in the light of the deployment of well tried and tested normal mitigation.

## **2.8 Reporting the Determination.**

Reporting of the Determination shall be undertaken through the completing of a Record of Determination (RoD). Project Teams shall use the template provided in Annex A. Guidance for completion of the RoD is included in Annex B.

Article 4 of the EIA Directive reminds that any determination needs to state why significant effects are likely in relation to the Annex III criteria. To ensure that this happens Annex A contains an updated version of the RoD Form which requires a clear explanation of reasoning.

Projects are reminded that there is no legal requirement to consult over the result of the determination and indeed this should not be carried out. Whilst projects are asked to inform the Competent Authority of any likely challenge prior to the determination being made, this usually becomes obvious during earlier consultation

## **2.9 Technical review of the RoD**

In the first instance, the draft RoD should be issued to the relevant Environmental Advisor for technical review. If the submitted RoD is not considered fit-for-purpose it will be returned to the project team for amendment. Once it is technically fit for purpose, it should be submitted by the Project Sponsor to the Highways England's Nominee.

## **2.10 Signing off the Determination**

The Determination is a decision under the provisions of the Infrastructure Act, 2015 by Highways England as the Competent Authority. This role must be completed in a manner separate from the developer role by a representative of the Highways England who is deemed to be competent to undertake the role and who has specific responsibility to do this.

This role is performed by the Environment Group Manager within Highways England

Project teams should allow for the Determination process in project programmes to ensure sufficient time is allowed for the necessary preparation examination and signing of the determination.

## **2.11 Storage of RoDs**

Projects are reminded that as any Determination can be made available to the public; RoDs need to be stored as a record in SHARE or equivalent. Together with any supporting assessment documents, whether a Screening Assessment, Scoping Assessment, Environmental Impact Assessment Reports/Environmental Statements, or Environmental Study Reports.

## **2.12 Publication -Notice of Determination**

Article 4 of Directive 52/14 EU requires the determination's need to be published. This is implemented via the publication of a Notice of Determination (NoD). The signing of the RoD by the Nominee then allows project teams to produce and publish the (NoD).

In publishing the NoD Project teams shall use the template provided in Annex C

Following "determination" DMRB Vol 11 Section 2 Part 3 recommends that NoDs should be published at least six weeks before start of works. IAN 126/09 further recommends that following negative determination nothing should be done to prejudice the Secretary of State's position should representations be made. It confirms it should be a project by project decision to decide on what to implement within this period.

This guidance has been reviewed and the following conclusions have been drawn:

- There is no legal requirement under Highways Act for a "standstill" period following the publication of the NoD. The determination is a judgement made by the strategic highways company within their powers. There is no right of, or process to challenge that decision under the Highways Act. Any challenge to the determination would need to be made via the courts to the effect that the Strategic Highways Company is acting outside of its powers or doing so in a manifestly unreasonable way.
- It follows that where a determination is soundly based, following due DMRB process and is reasonable, there is no reason to think that the judgement is more at risk than any other decision made by the Strategic Highways Company.

Based on the above, it is advised that projects take a view on whether in their opinion there is a risk of judicial challenge. Only where it is thought there is likely to be a challenge should the prejudice line be followed, the factors to consider together with Highways England's Environmental Advisors are;

- How robust the determination is, this is all about the degree of confidence that the determination is soundly based.
- Any knowledge about any potential risk of judicial challenge. Engagement with key stakeholders may be key to understanding these risks. For projects which have had no public consultation or the consultation bodies have not been consulted this may be part of the assessment of risk.

Consequently where the risk is thought to be low there is no reason that six weeks has to be allowed between publication of the NoD and Start of Works.

## **3. Withdrawal Conditions**

This IAN will be withdrawn in due course as and when the advice contained within is included within an updated version of DMRB Volume 11 and or other WwW processes.

#### **4. Contacts**

For queries regarding this IAN please contact:

David Hinde

Postal Address:       Highways England  
                              Ash House  
                              Falcon Road  
                              Sowton Industrial Estate  
                              Exeter  
                              EX2 7LB

#### **5. References**

Design Manual Roads & Bridges (DMRB) Vol 11.



# Annex A

## RECORD OF DETERMINATION

### Annex II relevant projects

|                                    |  |   |
|------------------------------------|--|---|
| Name of project:<br>.....<br>..... |  | Location (including national grid reference):<br>.....<br>..... |
|------------------------------------|--|---|

Qualifying criteria for Annex II relevant project: (tick as appropriate)

|  |                          |  |                          |   |                          |
|--|--------------------------|--|--------------------------|---|--------------------------|
| Improvement element of project is >1ha | <input type="checkbox"/> | Project is located within 'sensitive' area | <input type="checkbox"/> | Other with potential for significant effect (e.g. adjacent to sensitive area) | <input type="checkbox"/> |
|--|--------------------------|--|--------------------------|---|--------------------------|

A. Description of project:

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B. Description of sensitivity or value of local environment, including statutory and non-statutory designations:

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C. Details of environmental impact assessment work undertaken including a summary of the results of any internal and external consultation undertaken

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## ANNEX B

### Advice on the completion of the Record of Determination

The following advice is designed to ensure that a completed Record of Determination (RoD) is fit-for-purpose. It should be used by those drafting a RoD and by those reviewing the draft RoD prior to submitting to the Strategic Highways Company's Nominee.

It should be noted that the purpose of the RoD is to record the Determination decision and its justification. The RoD should be supported by an appropriate level of environmental assessment; however, it is not the purpose of the RoD to repeat that assessment, which is why the RoD is limited to two sides. However, project teams should note that reviewers, including PTSD Environmental Advisors or the Strategic Highways Company's Nominee, may ask for sight of any supporting assessments.

#### General

The RoD should be written in a clear concise manner, and is required to be limited to two sides in length. It may be accompanied by a Location Plan.

Under the heading 'Qualifying criteria for the Annex II relevant project', the qualifying criteria should be indicated by ticking the appropriate box.

#### A. Description of project

- The project description should be concise and written using non-technical language.
- The project description should include the main elements of any new construction or improvement works only (For hybrid projects it is only necessary to include new construction or improvement works, maintenance works should be excluded).
- The project description should include the size (in hectares) of the project. (For hybrid projects, the size of the project should include new construction or improvement works only. Maintenance works should be excluded from the calculation. This may require project teams to make a judgement.)
- A Location Plan may be provided.

#### B. Description of local environment

- Ensure that a brief description of the surrounding environment is given.
- Ensure sensitive areas\* are specifically identified and their proximity to the project described.
- Ensure that a summary of other statutory and non-statutory environmental designations is given, with a brief indication of their proximity to the project.

**C. Details of extent of environmental impact assessment undertaken and summary of consultation**

- A summary of the environmental assessment undertaken should be included.
- A summary of consultation with the Statutory Environmental Bodies (SEBs), including nil responses should be given, not including desk study requests. This should record any disagreements that any SEBs have with the impact assessment. It is important that where there are disagreements the Nominee is aware of these when considering whether to sign off the RoD. A brief description of how comments have been addressed should be included

**D. Summary of main predicted environmental effects**

- A summary of the main predicted environmental effects (either beneficial or adverse) that would result from project implementation should be provided. This needs to include whether effects are likely to be permanent, temporary, direct, indirect, secondary, cumulative, short, medium or long-term, positive or negative. This should include an indication of their potential significance.
- The summary should be consistent with the results of the supporting environmental assessment, clearly aligned with the assessment topics required by DMRB guidance, and with an indication of key mitigation assumptions clearly stated.

**E. Request for Determination**

- The Highways England Project Manager responsible for the scheme should sign and date this box.

**F. File reference**

- The purpose of inputting to file reference is to allow reviewers or strategic highways company's Nominee to consider supporting assessments as required.

**G. Determination decision, statement of case in support of this decision**

- The Determination decision shall be justified, clearly explaining why the decision has been reached. This shall be based on whether it is judged significant effects are thought to be likely or not taking into account the Annex III criteria. It will be rejected if the justification is absent or not clear.

**Annex C: NOTICE OF DETERMINATION**

.....( name of project)

**ENVIRONMENTAL IMPACT ASSESSMENT  
DETERMINATION UNDER SECTION 105 A (3) OF THE HIGHWAYS ACT 1980 (as amended)**

The Highways England gives notice that it has been determined that the (name of project)..... proposal which is a relevant project within the meaning of section 105A (1) of the Highways Act 1980 is/is not subject to environmental impact assessment in accordance with Part VA of the Highways Act 1980 implementing Directive 2011/92/EU as amended.

This is due to the fact that

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Further information on the project and about this notice may be obtained from

.....: (Name)  
Highways England,  
.....  
.....  
.....  
.....,  
Tel No.....  
or .....@highwaysengland.co.uk